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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,703	02/08/2002	Glenn Sandberg	FOR2188P0250US	2084

7590 05/23/2003  
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EXAMINER

HEITBRINK, TIMOTHY W

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 05/23/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/071,703

Applicant(s)

SANDBERG, GLENN

Examiner

Tim Heitbrink

Art Unit

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> | 6) <input type="checkbox"/> Other:  |

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the breather plate having a fill channel must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. The drawings only show the machine top plate 28 forming a mold plate support structure having both a delivery channel (narrow channel) and a fill channel (wide channel)

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The disclosure is objected to because of the following informalities: "top plate 28" (page 5, line 17) or "support plate 28" (page 7, line 1); "vent holes 100" (page 8, line 1) or "breather holes 100" (page 6, lines 3,4). Appropriate correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2,3,5-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, it is unclear how the wall comprises a breather plate since the breather plate does not have a fill channel. The Examiner will assume "wherein said wall" should be treated as --further-- in treating the above claims in view of the prior art.

Art Unit: 1722

In claim 6, proper antecedent basis is not found for "said recess." The Examiner will assume the dependency should be with claim 5 in treating claim 6 in view of the prior art.

In claim 7, the breather plate having a fill channel is incorrect. The Examiner will assume "fill channel" should be –fill recess– in claims 7-12.

In claim 13, the term "plate-like" is indefinite since "like" broadens "plate" an indeterminate amount.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Richards et al.

Richards et al. disclose a patty-forming apparatus comprising a mold plate<sup>15</sup>, a mold plate support structure 17 carrying said mold plate and guiding said mold plate for reciprocating motion, said structure including a wall facing said mold plate, said mold plate reciprocating along said wall, and a food product delivery channel 25 carried by said structure and arranged on one side of said mold plate, said delivery channel having a fill opening opening into said cavity when said mold plate is in a fill position with respect to said structure. While the wall does not have an additional channel extending from the delivery channel to feed the mold cavities (i.e. two separate channels), providing an additional channel would have been obvious in light of Howard v. Detroit

Art Unit: 1722

Stove Works, 150 U.S. 164, Nerven v. Erlichman, 168 USPQ 177, 179 and In re Dulberg, 129 USPQ 348 where making a part (i.e. channel) from separate parts (channels) is considered within the skill of the ordinary artisan.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner.

Wagner discloses a patty making apparatus comprising a mold plate 34 having a mold cavity, a mold plate support structure 21,32,191 carrying said mold plate and guiding said mold plate for reciprocating motion, said structure including a wall which forms part of a breather plate having air release slots (breather holes) 122 open to said mold cavity and a wall formed by plate flat fill plate 32, said mold plate reciprocating along said walls, a food product delivery channel formed in pressure chamber 21 and a fill channel 33 formed in fill plate 32. The mold plate 34 arranged to reciprocate between a knock out position located beyond said wall (Figs. 4,5) and a fill position (Fig. 6).

Claims 5-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The above claims define over the prior art since the prior art fails to disclose or suggest a recess formed into the breather plate, said recess open along a length


Art Unit: 1722

thereof into said cavity and increasing a transverse food product flow area along a longitudinal direction to assist filling of the cavity.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tim Heitbrink whose telephone number is 703-308-3789. The examiner can normally be reached on Tuesday-Friday 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Tim Heitbrink  
Primary Examiner  
Art Unit 1722

5-22-03

twh  
May 22, 2003